

FILED
United States District Court
District of Massachusetts

Civil Action No. 05-30052-MAP

CARNELL GARVIN,
Plaintiff,

v.

D.A. SULLIVAN & SONS, INC. and
CONSTRUCTION SAFETY SERVICES, INC.,
Defendants

**ANSWER OF THE DEFENDANT, CONSTRUCTION SAFETY SERVICES, INC.,
TO PLAINTIFF'S AMENDED COMPLAINT; AND DEMAND FOR JURY TRIAL**

The Defendant, CONSTRUCTION SAFETY SERVICES, INC.,
denying each and every allegation of the Plaintiff's Amended
Complaint unless specifically admitted, answers each
numbered paragraph as follows:

COUNT I

1. As to paragraph 1, the Defendant, Construction Safety Services, Inc., is without sufficient information to form a belief as to the truth of the allegations therein, and calls upon the Plaintiff to prove same.
2. As to paragraph 2, the allegations contained therein do not pertain to this defendant so no further answer is required.
3. As to paragraph 3, the Defendant, Construction Safety Services, Inc., admits the allegations therein.
4. As to paragraph 4, the allegations contained therein do not pertain to this defendant so no further answer is required.

5. As to paragraph 5, the Defendant, Construction Safety Services, Inc., admits the allegations therein.
6. As to paragraph 6, the Defendant, Construction Safety Services, Inc., is without sufficient information to form a belief as to the truth of the allegations therein, and calls upon the Plaintiff to prove same.
7. As to paragraph 7, the allegations contained therein do not pertain to this defendant so no further answer is required.
8. As to paragraph 8, the allegations contained therein do not pertain to this defendant so no further answer is required.
9. As to paragraph 9, the allegations contained therein do not pertain to this defendant so no further answer is required.

WHEREFORE, the Defendant, Construction Safety Services, Inc., prays for judgment as follows:

- a) dismissing each part of the Plaintiff's Amended Complaint on its merits;
- b) for its costs, disbursements and attorney fees; and
- c) for such other relief as the Court deems just and proper.

COUNT II

10. The Defendant, Construction Safety Services, Inc., reaffirms and re-alleges paragraphs 1 through 9 as if specifically reaffirmed and re-alleged herein.
11. As to paragraph 11, the Defendant, Construction Safety Services, Inc., answers that the allegations contained therein state a legal conclusion and, as such, no further answer is required. The Defendant otherwise denies the allegations therein.
12. As to paragraph 12, the Defendant, Construction Safety Services, Inc., denies the allegations therein.

WHEREFORE, the Defendant, Construction Safety Services, Inc., prays for judgment as follows:

- d) dismissing each part of the Plaintiff's Amended Complaint on its merits;
- e) for its costs, disbursements and attorney fees; and
- f) for such other relief as the Court deems just and proper.

AFFIRMATIVE DEFENSES

FIRST DEFENSE

The Defendant, Construction Safety Services, Inc., states that the Plaintiff's Amended Complaint fails to state a claim upon which relief may be granted.

SECOND DEFENSE

The Defendant, Construction Safety Services, Inc., states that the negligence of the Plaintiff contributed to and was a cause of any damages as alleged and such damages, if any, should be diminished in accordance with G.L. Chapter 231, Section 85, as amended.

THIRD DEFENSE

The Defendant, Construction Safety Services, Inc., states that the Plaintiff's negligence was greater than that of this defendant, and the Plaintiff is thereby barred from recovery under G.L. Chapter 231, Section 85, as amended.

FOURTH DEFENSE

The Defendant, Construction Safety Services, Inc., states that if the Plaintiff sustained damages as alleged in the Plaintiff's Amended Complaint, such damages were caused by a third person over whom this defendant exercised no control, and for whom this defendant is and was not responsible.

FIFTH DEFENSE

The Defendant, Construction Safety Services, Inc., states that if the Plaintiff sustained damages as alleged in the Plaintiff's Amended Complaint, such damages were caused by the intervening and superseding acts of a third person,

which acts this defendant did not and reasonably could not foresee.

SIXTH DEFENSE

The Defendant, Construction Safety Services, Inc., states that the Plaintiff is barred from recovery in that his conduct alone is the proximate cause of his injuries.

SEVENTH DEFENSE

The Defendant, Construction Safety Services, Inc., states that the Plaintiff's Amended Complaint must be dismissed as there has been untimely and/or improper process.

EIGHTH DEFENSE

The Defendant, Construction Safety Services, Inc., states that the Plaintiff's Amended Complaint must be dismissed as there has been untimely and/or improper service of process.

NINTH DEFENSE

The Defendant, Construction Safety Services, Inc., states that this action was not commenced within the time required by the applicable statute of limitations, and, therefore, Plaintiff's claim should be barred.

TENTH DEFENSE

The Defendant, Construction Safety Services, Inc., states that this court lacks jurisdiction over the subject matter of this case.

ELEVENTH DEFENSE

The Defendant, Construction Safety Services, Inc., states that this court lacks jurisdiction over the person of the Defendant.

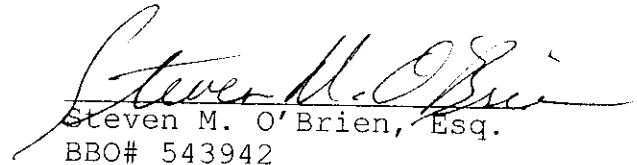
TWELFTH DEFENSE

The Defendant, Construction Safety Services, Inc., states that venue is not proper, and, therefore, Plaintiff's claim should be dismissed.

DEMAND FOR JURY TRIAL

THE DEFENDANT, CONSTRUCTION SAFETY SERVICES, INC., DEMANDS A
TRIAL BY JURY IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS ON ALL ISSUES RAISED BY THIS CASE.

Respectfully submitted,
The Defendant, Construction
Safety Services, Inc.
By Counsel,


Steven M. O'Brien, Esq.
BBO# 543942

Long & Houlden
100 Summer Street, 11th Floor
Boston, MA 02110
Telephone: (617) 439-4777

DATE: 5/13/05

CERTIFICATE OF SERVICE

I, Steven M. O'Brien, Attorney for the Defendant, Modern Construction Safety Services, Inc., hereby certify that on this 15th day of May, 2005, I have served a copy of the following documents:

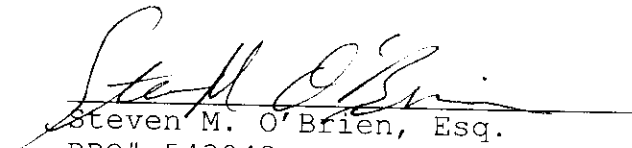
1. NOTICE OF APPEARANCE; and
2. ANSWER OF THE DEFENDANT, CONSTRUCTION SAFETY SERVICES, INC., TO PLAINTIFF'S AMENDED COMPLAINT; AND DEMAND FOR JURY TRIAL

by mailing a copy of the same first-class mail, postage prepaid, to the following counsel of record:

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